applicants from the partnership was not registered with the Registrar of Businesses, nor was there any evidence that a notice of such withdrawal was given by the applicants to the plaintiffs. As on the date of the filing of this action the names of the applicants still appeared in the Registry of Businesses as partners of the defendant firm, the plaintiffs were entitled to treat them as being partners of the firm and were therefore justified in serving the writ of summons and notice on them.

It was decided in the old case of *Graham & Ors.* v. *Hope & Ors.*[1] that when partners dissolve their partnership, they should send notice to all persons who have trusted them as partners. In the present case the applicants either should have given notice to the plaintiffs of their withdrawal or taken steps to see that their withdrawal was duly registered with the Registrar of Businesses. In the absence of such notice or registration they were not entitled to succeed on their application. I therefore dismissed the application with costs.

Application dismissed.

Solicitors: *P. C. Au-Yong & Co.; L. S. Tan.*

WONG CHOOI v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) June 22, 1967]

[K.L. — Criminal Appeal No. 23 of 1967]

Arms — Offensive weapon — Possession of — Burden of proof — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s. 6(1).

Evidence — Burden of proof — Statutory or common law — Accused's explanation.

Where a burden is placed on an accused person to prove anything, by statute or common law, that burden is only a slight one and this burden can be discharged by the evidence of the witnesses for the prosecution as well as by the evidence for the defence.

Case referred to:—

(1) *Public Prosecutor* v. *Sundravelu* [1967] 1 M.L.J. 79.

MAGISTRATE'S CRIMINAL APPEAL.

Jegadevan Nadchatiram (*Nadchatiram Sraswathy Devi* with him) for the appellant.

Zaitoon binte Osman (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya): The appellant was convicted of having in his possession an offensive weapon to wit a parang without lawful purpose, an offence punishable under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, No. 43 of 1958.

The facts for the prosecution may be summarised as follows:—

Lim Ah Chye, P.W.2 stated that on the date in question he was in a coffee shop owned by P.W.3 Tang Kwoi Boey (f). He was drinking coffee then when about 6 or 7 persons came into the shop and attacked him. These persons were armed with changkol handles and a parang. The appellant, one of them, was carrying the parang in his hand. Witness also stated that he did not know why these persons assaulted him. At first he said the appellant himself did not attack him but subsequently in his evidence he said the appellant held up the parang to slash him. Soon after a police constable Yap Sean Hua arrived at the scene. In his evidence he said he saw appellant holding a parang and was about to slash at Lim Ah Chye, P.W.2.

Tang Kwoi Boey (f) the owner of the shop said that she was at the back of the shop and therefore did not know what happened. She stated the parang P.1 did not belong to her and never saw it before. Subsequently however, she stated that she rang up a shop called Messrs. Lee Hua informing them that the juke box in the shop was out of order.

P.W.4 Chan Siew Teng (f) an assistant in the shop stated that she saw a car load of male Chinese arrive at the shop and that these people came to attend to the radio which was out of order but when they entered the house a fight started, but was unable to say between whom. She also denied that P.1 belonged to the shop. In answering to cross examination she said that when these persons arrived they said they came to repair the radio and that one of them was carrying a bag. But she did not see whether they had anything else in their hands.

Investigating Officer Low Kan Loong, among other things stated that he recorded a cautioned statement under section 75 of the Internal Security Act from the appellant and that statement was put in as part of the evidence for the prosecution and marked Exh. P.2.

In the statement appellant stated that he was an electrician employed by the Modern Electric Co. On the date in question he received a telephone call from the proprietress of the coffee shop. She also complained that persons were disturbing the pin table that was placed in the the shop. After receiving the telephone call the appellant and 5 others then went to the shop. On arrival at the shop he saw Lim Ah Chye P.W.2 playing at a pin table. Then an argument ensued between Lim Ah Chye and two of his friends. Then he went on as follows:—

"At that time, I was not able to say who was assaulting who. At that time, I saw the male Chinese Lih Ah Chai whirling chairs and I became frightened and I then saw a parang on the ground and I picked it up with a view of using it to defend myself should I be attacked.

As I was holding the parang and moving away from the place, a plain clothes policeman came up to me and arrested me and I handed to him the parang. . . .

The parang did not belong to me. I picked it from

the ground to defend just in case I was attacked. When we went to the coffee shop where the assault took place, we did not bring along any changkol handle or parang.

The pin table was placed in the said coffee shop by my proprietor named Chin Yan Kee only a few days ago.

The male Chinese Lim Ah Chai was assaulted by my colleagues because it was suspected that he had broken the pin table in order to take the money as this had happened in the past."

The learned president after referring to the facts of the case for the prosecution stated in reference to the cautioned statement as follows:—

"In itself the statement is not proof of the guilt of the accused. This is so, as the statement is not always true and it must be checked in the light of the whole of the evidence in order to see if it carries any weight to the accused's guilt. In this case I go no further than to say that it was not made in breach of any rules of positive law and therefore admissible in evidence. This seems more particularly so, as after I had called on the accused to make his defence he elects to remain silent."

The learned president quoted a passage from the judgment of Raja Azlan Shah J. in *Public Prosecutor* v. *Sundravelu* [1] to the effect that in a charge for possession of offensive weapon under section 6(1) of the Ordinance, the burden is on the accused to prove that he possessed the weapon for a lawful purpose at the time when he was found to be in possession.

The learned president then went on to state that both P.W.1 and P.W.2 had testified seeing the accused with the parang in his hand, but unfortunately, the learned president had failed to refer to the part of the appellant's cautioned statement whereby he explained how he came into possession of the parang and the reason why he took possession of it. In this respect the learned president also failed to consider the evidence of P.W.4, who stated that when the appellant and the others entered into the shop that she did not see any of them carrying anything else except a bag of tools.

It is true, that under section 6(1) of the Ordinance the burden is on the accused to prove that he possessed a weapon for a lawful purpose at a time when he was found to be in possession.

In my view the law is quite clear, that where a burden is placed on an accused person to prove anything, by statute or common law, that burden is only a slight one and that this burden can be discharged by the evidence of the witnesses for the prosecution as well as by the evidence for the defence.

In this case the prosecution itself put in the cautioned statement as part of its case against the appellant. The appellant's explanation as to how he came into possession of the parang in the absence of any other evidence contradicting or varying it, should in my view be accepted as reasonably true and would in the circumstances be sufficient to discharge the burden placed on him under section 6(1), or would be sufficient to raise a reasonable doubt in the mind of the learned trial president as to whether the appellant possessed the weapon for an unlawful purpose.

For these reasons I would therefore say that she should have given the appellant the benefit of that doubt and should have acquitted him.

I would therefore allow the appeal and set aside the conviction and sentence.

Appeal allowed.

Solicitors: *Nadchatiram Bros.*

K. CHELLARAM & SONS (F.E.) LTD. v. NISSHO SHIPPING CO. LTD. AND THE PORT OF SINGAPORE AUTHORITY

[O.C.J. (Buttrose J.) June 23, 1967]

[Singapore — Civil Suit No. 1280 of 1965]

Shipping — Carriage of goods by sea — Goods discharged by carriers — Custody by Port Authority — Failure of delivery — Liability of carriers — Liability of Port Authority — Cesser of liability of carriers upon discharge — Relief from liability of Port Authority under Ordinance — Port of Singapore Authority Ordinance, 1963, ss. 88(1) & (2), 89, 96(1), 128(2) and 131.

Bills of lading — Cesser of liability of carriers upon discharge — Conflict with Hague Rules — Severance — Hague Rules, Art. III, r. 8.

The plaintiff claimed damages against the first defendant for breach of contract of carriage of 3 cases of goods by sea and/or conversion, and in the alternative against the second defendant for negligence in the custody and care of the 3 cases of goods. The parties stated a special case for the opinion of the court. The first defendant accepted the shipment of 5 cases of goods and agreed to deliver the same at Singapore to order and to the order of the Bank of India, Ltd. respectively. The contract evidenced by the bills of lading were subject to the Hague Rules. The goods were duly shipped and discharged ex ship's tackle by the first defendant into the possession of the second defendant. When plaintiff who for the purpose of this special case it was agreed at all material times was the owner of the goods and the endorsee of the bills of lading, presented delivered orders to the second defendant the second defendant delivered to the plaintiff only two cases of the goods. The first question was whether on the facts stated and on the construction of section 88(2) of the Port of Singapore Authority Ordinance, 1963 (hereinafter referred to as the Ordinance), the second defendant was relieved of liability to the plaintiff. The second question was whether on the facts and on the true construction of the bills of lading and of section 88(1) of the Ordinance the first defendant was relieved of liability to the plaintiff.

Held: (1) on the true construction of section 88(2) of the Ordinance the second defendant was relieved of all liability to the plaintiff. The legal position prior to the coming into force of the Ordinance was that the person or body into whose custody a carrier discharges his goods would be liable in tort in an action for damages for negligence. Section 88 is not concerned with placing liability on anybody. The Ordinance under Part X deals with the limitation of the Port Authority's liability. The concept of agency was brought in so that the